

Docket No. AB-238U2

Remarks/Arguments

By way of the present amendment, Applicants have canceled Claims 2-4 and Claims 8-20; amended Claims 1 and 5; and added nine new claims, Claims 21-29. Thirteen (13) claims remain pending in the application: Claims 1, 5-7, and 21-29, of which Claims 1, 22 and 29 are independent. Applicants respectfully request reconsideration of the pending claims, in view of the amendments above and comments below.

Claim Rejections

The Examiner rejected Claim 1 under 35 U.S.C. § 112, second paragraph. In particular the Examiner has indicated that "the microphone" in lines 5-6 has insufficient antecedent basis. Claim 1 has been amended to address this concern and, *inter alia*, to clarify Applicants' invention, hence this rejection should be overcome.

The Examiner further rejected Claims 1-3 and 5-7 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Zilberman et al. (U.S. Patent No. 5,824,022) in view of Huth (U.S. Patent No. 3,098,127) or de Vries et al. (U.S. Patent No. 4,727,582). The Examiner further indicated that Claim 4 contains allowable subject matter and would be allowable if rewritten in independent form including all of the limitation of the base claim and intervening claims.

As stated above Claim 1 has been amended to clarify Applicants' invention and to include the allowable subject matter from original Claim 4 and intervening Claims 2-3 (which claims have been canceled). In view of this amendment, independent Claim 1 should now be in condition for allowance, as should all of the claims that depend therefrom.

Newly Added Claims

By way of the present amendment, new Claims 21-29 have also been added. Support for new dependent Claim 21 is found, e.g., in paragraph [0029] and in FIG. 5. New independent Claims 22 and 29 claim variations of the subject matter of original Claim 4 and

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have been rewritten to include additional limitations relative to the positioning of the microphone within the concha of the ear. Support for these new claims is found, *inter alia*, in paragraphs [0009], [0027], [0028], [0029] and in FIGS. 3-5.

New claims 21-29 should be allowable over Zilberman et al. alone or in combination with Huth or de Vries et al. for at least the following reasons: Zilberman et al. do not teach an apparatus for use with a Behind The Ear Implantable Cochlear Stimulation system which includes a bendable, formable stalk used to position a microphone in the concha of the ear with the soundport facing downward. Rather, Zilberman et al., teach a headpiece assembly having a microphone tube 36 coupled to the end of the case 32, allowing the microphone 38 to be positioned *inside* of the ear canal. See Col. 5, lines 20-24. Both Huth and de Vries et al. teach a hearing aid device, not a cochlear stimulation system, that similarly has a microphone positioned *inside* the ear canal of a user.

As presented in new independent Claims 22 and 29, Applicants claim an apparatus for use with a Behind The Ear Implantable Cochlear Stimulation system which includes a bendable, formable stalk used to position a microphone in the concha of the ear with a soundport facing downward. The concha is part of the external ear and "[t]he microphone assembly 26 preferably resides behind the tragus and directed towards the concha of the ear, with the soundport 30 facing downward and somewhat rearward." See paragraph [0027] and FIG. 3. By teaching that the microphone should be placed in or near the ear canal, Zilberman, Huth and de Vries et al. actually teach away from putting the microphone anywhere else within the external ear, such as in the concha of the ear. Having the microphone positioned in the concha of the ear offers numerous advantages over having it positioned in the ear canal, as described, e.g., in paragraph [0009] – [0012] and [0031].

Any combination of positioning the microphone assembly behind the tragus and directed towards the concha of the ear is intended to come within the scope of newly added Claims 22-29. "Some users may vary location of the microphone assembly 26, and these variations are intended to come within the scope of the present invention". See paragraph [0027] from Applicants' specification.

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Conclusion

In view of the above, it is respectfully submitted that Claims 1, 5-7 and 21-29 should be in condition for allowance. An indication of allowability with respect to these claims is earnestly solicited.

The Examiner is invited to telephone the undersigned, Victoria A. Poissant, at the telephone number indicated below, or Bryant R. Gold, at one of the telephone numbers indicated below, should any issues remain after consideration and entry of this response, in order to permit early resolution of such issues.

Respectfully Submitted,

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